



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2019-0164; FRL-9998-58-Region 2]

Approval of Air Quality Implementation Plans; New Jersey; Determination of Attainment for the 1971 Sulfur Dioxide National Ambient Air Quality Standard; Warren County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a determination that the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (Warren County) Sulfur Dioxide (SO₂) Nonattainment Area has attained the 1971 SO₂ primary and secondary National Ambient Air Quality Standards (NAAQS). This action does not constitute a redesignation to attainment. The Warren County Nonattainment Area will remain nonattainment for the 1971 primary and secondary NAAQS until the EPA determines that the Area meets the Clean Air Act (CAA) requirements for redesignation to attainment, including an approved maintenance plan. This action is being taken under the CAA.

DATES: This final rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number **EPA-R02-OAR-2019-0164**. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the "For Further Information Contact" section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, (212) 637-3702, or by email at fradkin.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA designated all of Warren County, New Jersey as attainment for the 1971 SO₂ primary and secondary NAAQS on March 3, 1978 (43 FR 8962). On December 31, 1987 (52 FR 49408), the EPA redesignated portions of Warren County as nonattainment for both the primary and secondary 1971 SO₂ NAAQS at the request of the State of New Jersey (the State) to revise the air quality designation for the area. EPA issued a minor correction to the redesignation on March 14, 1988 (53 FR 8182).

The 1971 SO₂ NAAQS consisted of two primary standards for the protection of public health and one secondary standard for the protection of public welfare. The primary SO₂ NAAQS addressed 24-hour average and annual average ambient SO₂ concentrations. The secondary standard addressed 3-hour average ambient SO₂ concentrations. The level of the annual SO₂ standard was 0.03 parts per million (ppm) (or 80 micrograms per cubic meter (µg/m³)) not to be exceeded in a calendar year. See 40 CFR 50.4(a). The level of the 24-hour standard was 0.14 ppm (or 365 µg/m³), not to be exceeded more than once per calendar year. See 40 CFR 50.4(b). The level of the secondary SO₂ standard is a 3-hour standard of 0.5 ppm (or 1300 µg/m³), not to be exceeded more than once per calendar year. See 40 CFR 50.5(a).

The EPA initially designated all of Warren County, which is part of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (AQCR), as “better than national standards” (otherwise known as “attainment”) for the 1971 primary and secondary SO₂ NAAQS on March 3, 1978 (43 FR 8962). On April 30, 1986 and June 26, 1986, the New Jersey Department of Environmental Protection (NJDEP) submitted a request to EPA to revise the air quality designation for parts of Warren County from “attainment” to “nonattainment” with respect to the 1971 primary and secondary SO₂ NAAQS. The EPA revised the designations for those parts of Warren County to “does not meet standards” (otherwise known as “nonattainment”) based on the State’s request under section 107 of the CAA and the EPA’s assessment of air dispersion screening modeling performed by the NJDEP and others that showed portions of Warren County were in violation of the SO₂ NAAQS.

The December 31, 1987 nonattainment redesignation for Warren County included the entire Townships of Harmony, Oxford, White, and Belvidere, and portions of Liberty¹ and Mansfield² Townships. See 52 FR at 49411, 53 FR 8182, and 40 CFR 81.331. The remaining portion of Warren County remained designated as attainment.

New Jersey was required to submit an attainment SIP to the EPA by May 15, 1992, i.e., within 18 months³ of November 15, 1990. The Warren County Nonattainment Area was required to attain the SO₂ NAAQS within five years⁴ after November 15, 1990. Therefore, the Warren County SO₂ Nonattainment Area’s attainment date was November 15, 1995.

On June 14, 2018, the Center for Biological Diversity, Center for Environmental Health, and Sierra Club (CBD) filed suit against the EPA in the U.S. District Court for the Northern

¹ Portions of Liberty south of UTM coordinate N4522 and West of UTM E505 (See 53 FR 8182, March 14, 1988).

² Portions of Mansfield west of UTM E505 (See 53 FR 8182, March 14, 1988).

³ CAA §191(b).

⁴ CAA §192(b).

District of California seeking to compel the EPA to, among other things, determine that New Jersey had failed to submit a required SIP for the New Jersey portion of the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (part) nonattainment area, and amended that complaint on December 17, 2018. See *Center for Biological Diversity, et al., v. Wheeler*, Civ. No. 18-cv-3544-YGR (N.D. Cal.). This case is still pending.

The NJDEP submitted a request on August 17, 2018 for the EPA to make a determination that the Warren County SO₂ Nonattainment Area had attained the 1971 primary and secondary SO₂ NAAQS (Warren County SO₂ Clean Data Request). On May 20, 2019 (84 FR 22768) the EPA proposed to make the determination that the Warren County Nonattainment Area attained the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS. The details of the NJDEP submittal and the rationale for EPA's proposed action are explained in the Notice of Proposed Rulemaking (NPR) and will not be restated here.

On July 23, 2019 NJDEP submitted a supplement to the Warren County SO₂ Clean Data Request to provide clarification that New Jersey has met its obligation to satisfy Nonattainment New Source Review (NNSR) and the Emission Inventory (EI) SIP requirements for the 1971 SO₂ NAAQS through previous SIP submittals to the EPA on February 19, 1993⁵ (for NNSR) and June 11, 2015⁶ (for EI).

EPA's final determination that the area has attained the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS, suspends the requirements for the State to submit a reasonable further progress plan, attainment demonstration, contingency measures and any other planning SIP relating to attainment of the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS for so long as the Warren County Nonattainment Area continues to meet each NAAQS. Although these requirements will

⁵ EPA approval at 61 FR 38591 (July 25, 1996).

⁶ EPA approval at 82 FR 44099 (September 21, 2017).

be suspended, the EPA would not be precluded from acting upon these elements at any time if submitted to the EPA for review and approval.

II. What comments did the EPA receive on the proposal and what are the EPA's responses?

The public comment period on EPA's proposed determination opened May 20, 2019, the date of its publication in the **Federal Register**, and closed on June 19, 2019. During this period, the EPA received one set of public comments that were submitted anonymously in response to the NPR. A summary of the comments, and the EPA's response, is provided below.

Comment: The commenter asserts that the EPA incorrectly used annual emissions to predict maintenance of a 3-hour and 24-hour standard, and therefore cannot approve a clean data determination as the annual data does not predict maximum potential emissions from sources in the nonattainment area in such a way that will affect the short-term standards. Annual emission reductions do not solve nonattainment problems, the commenter claims, and the EPA must stop relying on annual emissions, for short-term standards. The commenter further argues that the EPA should be using potential emissions rather than actual emissions as sources in the nonattainment area are not required to keep their actual emissions as low. The commenter also asserts that the EPA should reanalyze potential emissions from the Portland Generation Station since the facility is subject to the BAT (or Best Available Technology) emission limits of 2,287.2 pounds (lbs.)/day and 39.67 tons/year of SO₂ from No. 2 oil instead of Title 25 Pennsylvania Code [Pa. Code] Section 123.22 since no such citation exists in Portland's current Title V permit.

EPA Response: The commenter's assertion that the EPA is evaluating maintenance of the NAAQS in the NPR (i.e., using annual emissions to predict maintenance for the 3-hour and

24-hour standard) is incorrect. In this rulemaking, EPA is determining that current air quality meets these air quality standards, an action known as a Clean Data Determination (CDD), not whether the area will maintain the standard. In a Clean Data Determination, it is appropriate to use actual emissions in the state's air quality modeling or other assessments because such emissions inform actual conditions, i.e., whether the current air quality in the area is attaining the standards. This action does not require a demonstration of maintenance. By contrast, in an action for redesignation under CAA section 107(d)(3), which is not the case here, the State would need to submit, and the EPA would be required to approve, a maintenance plan that provides for a demonstration of attainment and maintenance of the NAAQS. The NPR published on May 20, 2019 (84 FR 22768), was limited to a CDD for the Warren County Nonattainment Area for the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS – and not redesignation to attainment. The EPA has not received a request from the State for redesignation of the Warren County Nonattainment Area to attainment. At the time the State chooses to make such a redesignation request, it must still meet the statutory requirements for a redesignation, which includes submission of a maintenance plan, to be redesignated to attainment. Nevertheless, in response to this comment, the EPA examined relevant reductions in allowable emissions and, as discussed below, concluded that potential emissions are below levels needed to assure continued attainment.

EPA also believes that the commenter understates the utility of annual emissions data. EPA recognizes that air quality on a 3-hour or 24-hour average basis is a function of the magnitude of emissions during periods when the meteorology is conducive to poor air quality. At the same time, if annual emissions are low, particularly in cases like this where average emissions are about two orders of magnitude lower than the levels shown to yield attainment, the annual emissions data create a high likelihood that emissions during critical periods will be low

enough not to cause violations of the applicable air quality standard. As noted in the NPR and the EPA's Technical Support Document (TSD), actual SO₂ emissions from the Martins Creek Generating Station (Martins Creek), located in Northampton, Pennsylvania (PA), and the Portland Generating Station (Portland) also located in Northampton, PA, have declined substantially since the EPA's SO₂ nonattainment designation (December 31, 1987, 52 FR 49408). Actual annual SO₂ emissions from those sources declined 99.8 percent, from 58,721 tons per year in 1990 to an average of 129 tons per year in 2015-2017. Martin's Creek, which in 1990 emitted 33,300 tons of SO₂ per year, has shut down its coal-fired boilers, and the remaining oil-fired boilers are currently emitting an average of 88 tons of SO₂ per year. Portland, which in 1990 emitted 25,400 tons of SO₂ per year, has shut down its coal units, and is currently emitting less than 0.5 tons of SO₂ per year. No other source in the area emits more than 15 tons of SO₂ per year.

In any case, EPA has conducted a further examination of short-term emissions data from significant sources in the Warren County area. Modeling discussed in the notice of proposed rulemaking demonstrated that the pertinent SO₂ standards would be attained with Martins Creek emitting at approximately 32,000 pounds per hour and Portland emitting approximately 15,000 pounds per hour⁷. The highest hourly emission rate from the remaining emission points at Martins Creek (Units 3 and 4) in the last three years was about 1,300 pounds per hour⁸. Most of Portland has been shut down, and the remaining unit (Unit 5), which mostly fires natural gas, had

⁷ See Table 2-1 Sulfur Dioxide Emissions for the Sources Modeled in the Martins Creek modeling report (ID: EPA-R02-OAR-2019-0164-0003) included in the docket of the rulemaking.

⁸ Current and historical data collected as part of EPA's emissions trading program is available at <https://ampd.epa.gov/ampd/>

maximum emissions in the last three years of about 30 pounds per hour⁹. Thus, short term emissions data clearly support EPA's conclusion that the Warren County area is attaining the 1971 SO₂ standards.

Although this action is focused on current actual air quality, EPA also considered potential (or allowable) SO₂ emissions in its analysis of the State's CDD request. As the EPA noted in the TSD, the allowable SO₂ emissions from the principal contributing sources at Martin's Creek and Portland as well as sources located in the Warren County nonattainment area decreased 81 percent, from 208,186 tons per year in 1987 to 38,747 tons per year in 2018, i.e., a reduction from 47,531 pounds per hour to 8,846 pounds per hour.

The air dispersion modeling conducted in June 1999 (the 1999 study) showed that attainment could be assured for the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS with only slight reductions in the emissions that were "allowable" (what the commenter would call the potential emissions) at that time. The facilities were modeled at their maximum, short-term emission rate limits. Specifically, this modeling showed (as noted earlier in this section) that the area would attain the 1971 SO₂ standards with allowable emissions of approximately 32,000 pounds per hour from Martins Creek, and approximately 15,000 pounds per hour from Portland emitting. Since the 1999 study, Martins Creek and Portland have had dramatic decreases in allowable emissions as a result of unit shutdowns, more stringent operating permits, and a more stringent SIP-approved Sulfur in Fuels regulation under Title 25 Pa. Code Chapter 123, section 123.22¹⁰ that would reduce the predicted SO₂ concentrations.

⁹ Current and historical data collected as part of EPA's emissions trading program is available at <https://ampd.epa.gov/ampd/>

¹⁰ On July 10, 2014, the EPA approved 25 Pa. Code Chapter 123, section 123.22 into the PA SIP (79 FR 39330).

Both the Martins Creek and Portland facilities have shut down and/or dismantled several emissions units. At Martins Creek, coal-fired Units 1 and 2 have been shut down and dismantled since September 2007. Martins Creek Auxiliary boiler 4B has also shut down. Similarly, Portland has permanently shut down its Coal-fired Units 1 & 2 in compliance with a Consent Decree. Martins Creek currently limits its No. 6 Oil-fired Units 3 and 4 to burning only No. 6 oil at no more than 0.5 percent sulfur to comply with the revised 25 Pa. Code Chapter 123, section 123.22, even though these equipment's emissions were modeled at a sulfur content of 1 percent.

Further, both the Martins Creek and Portland facilities' operating permits contain more stringent operating conditions. Martins Creek Units 3 and 4's allowable emissions were reduced from 77,109 tons per year in 1999 to 38,544 tons per year in 2018, corresponding to hourly emission rates declining from 17,605 pounds per hour to 8,800 pounds per hour. Further, Martins Creek combustion turbines are currently permitted to use only natural gas. Portland's combustion turbines Units 3, 4 and 5 are limited to burning No. 2 oil at no more than 0.05 percent sulfur under 25 Pa. Code Chapter 123, section 123.22. Portland Unit 1 ceased burning coal in May 2014, and Unit 2 did so in June 2013.

Current allowable emission rates are substantially below the levels found in 1999 to provide for attainment. As noted earlier in this section, the allowable SO₂ emissions from the principal contributing sources at Martin's Creek and Portland as well as sources located in the Warren County nonattainment area decreased from 47,531 pounds per hour in 1987 to 8,846 pounds per hour in 2018. Consequently, this evidence provides further support for the conclusion that the Warren County nonattainment area is now attaining and will continue to attain the SO₂ NAAQS.

The EPA disagrees with the commenter's suggestion that the EPA should reanalyze potential emissions from the Portland facility since it is subject to BAT limits (which is 2,287.2 lbs./day and 39.67 tons /year of SO₂ from No. 2 oil) instead of the No. 2 fuel oil limits in 25 Pa Code Chapter 123, section 123.22, because the PA regulatory provision is not listed in Portland's current Title V permit.

25 Pa Code Chapter 123, section 123.22 is a SIP-approved regulation that includes maximum allowable sulfur content limits of 0.05 percent sulfur by weight for No. 2 and lighter distillate oil for combustion all units. The rule is federally enforceable, and the sulfur fuel limits currently apply to the Portland facility.

The EPA notes that Portland combustion turbines Units 3 and 4 were modeled in June 1999 at a much higher (and more conservative) emission rate than the BAT limit of 2,287 lbs./day cited by the commenter. Unit 3 was modeled at 16.51 grams per second (equivalent to 3,145 lbs./day), and Unit 4 was modeled at 22.36 grams per sec (equivalent to 4,259 lbs./day). See Table 2-1 Sulfur Dioxide Emissions for the Sources Modeled in the Martins Creek modeling report (ID: EPA-R02-OAR-2019-0164-0003) included in the docket of the rulemaking. Because the June 1999 modeling was based on more conservative emissions estimates, any additional modeling using the suggested BAT limit would also support that the limits that the Warren County Nonattainment Area sources are meeting limits are resulting in attainment, and the conclusions of the CDD would not change.

III. Final Action

The EPA is finalizing a determination that the Warren County Nonattainment Area has attained the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS. This "Clean Data Determination" is

based on air quality monitoring data, air quality dispersion modeling information, as well as other supporting information indicated in this final rule. EPA's determination that the area has attained the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS, suspends the requirements for the State to submit a reasonable further progress plan, attainment demonstration, contingency measures and any other planning SIP relating to attainment of the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS for so long as the Warren County Nonattainment Area continues to meet each NAAQS. Although these requirements are suspended, the EPA would not be precluded from acting upon these elements at any time if submitted to the EPA for review and approval.

Issuance of a CDD does not constitute a redesignation of the Warren County Nonattainment Area to attainment for the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS under CAA section 107(d)(3). The CDD does not involve approving any maintenance plan for the Warren County Nonattainment Area, nor does it serve as a determination that the Warren County Nonattainment Area has met all the requirements for redesignation under the CAA; any such redesignation would require, among other things, that the attainment is attributable to permanent and enforceable measures. Therefore, the designation status of the Warren County Nonattainment Area will remain nonattainment for the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS until the EPA takes final rulemaking action to determine that the Warren County Nonattainment Area meets the CAA requirements for redesignation to attainment.

IV. Statutory and Executive Order Reviews

This action finalizes a determination of attainment for the 1971 SO₂ NAAS based on air quality and other information that results in the suspension of certain Federal requirements and would not impose any additional requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 1985, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the attainment determination is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: August 8, 2019.

Peter D. Lopez,
Regional Administrator,
Region 2.

Part 52 chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

2. In §52.1576, paragraph (e) is added to read as follows:

§52.1576 Determinations of attainment.

* * * * *

(e) EPA has determined, as of [**Insert date of publication in the Federal Register**], that the Warren County Nonattainment Area has attained the 3-hour, 24-hour, and annual 1971 sulfur dioxide national ambient air quality standard (NAAQS). This determination (informally known as a Clean Data Determination) is based on air quality monitoring data, air quality dispersion modeling information, and other supporting information. This determination suspends the requirements for the State to submit a reasonable further progress plan, attainment demonstration, contingency measures and any other plan elements relating to attainment of the 3-hour, 24-hour, and annual 1971 SO₂ NAAQS for as long as the area continues to meet each NAAQS.